

Revised: 06/20/08	ARIZONA DEPARTMENT OF EDUCATION GUIDELINE & PROCEDURE	NO. EX - 13
SUPERSEDES: 5/08 & Prior		SHEET 1 of 9 (See attached)
SUBJECT: ESS- Federal Procedural Safeguards		FILING INSTRUCTIONS (Guidelines & Procedures Manual) Section: External As item: EX - 13

I. PURPOSE

- The public agency will establish, maintain, and implement procedural safeguards that meet the requirements of §300.500 through 300.536 of the IDEA Regulations.

II. GUIDELINE/PROCEDURE

- See Attached

LOCATOR	YES/NO	PROCEDURAL SAFEGUARDS Policy & Procedure Checklist
		POLICY
		The public agency will establish, maintain, and implement procedural safeguards that meet the requirements of §300.500 through 300.536 of the IDEA Regulations.
		PROCEDURES
		§300.501 OPPORTUNITY TO EXAMINE RECORDS; PARENT PARTICIPATION IN MEETINGS 1) The public agency will ensure that the parents of a child with a disability shall be given an opportunity to inspect and review all education records with respect to the identification, evaluation, educational placement, and the provision of FAPE to the child. 2) The public agency will ensure that the parents of a child with a disability shall: <ol style="list-style-type: none"> be given an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the child. be provided notice consistent with §300.322 to ensure they have opportunity to participate in meetings. be members of any group that makes decisions on the educational placement of their child 3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. 4) A placement decision may be made by a group without the involvement of the parent, if the public agency is unable to obtain the parent's participation and has maintained a record of its attempts to ensure their involvement.
		§300.502 INDEPENDENT EDUCATIONAL EVALUATION 1) The parents of a child with a disability have the right to obtain an independent educational evaluation of their child. The public agency must provide to parents, upon request for an independent educational evaluation: <ol style="list-style-type: none"> Information about where an independent educational evaluation may be obtained; and The agency criteria applicable for independent educational evaluations. Agency criteria for the independent educational evaluation must be the same as the criteria the agency uses when it conducts an evaluation, to the extent consistent with the parent's right to an evaluation. 2) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either <ol style="list-style-type: none"> File for a due process hearing to show that its evaluation is appropriate; or

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		<p>b) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria.</p> <p>3) If a due process hearing decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.</p> <p>4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reasons for the objections, but may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a request for due process to defend its evaluation.</p> <p>5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.</p> <p>6) The results of any independent educational evaluation which is obtained by or provided to the public agency:</p> <p>a) must be considered by the public agency, if it meets agency criteria, in any decision with respect to the provision of FAPE to the child; and</p> <p>b) may be presented by any party as evidence in a due process hearing.</p> <p>7) If a hearing officer requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.</p>
		<p>§300.503 PRIOR NOTICE BY THE PUBLIC AGENCY; CONTENT OF NOTICE</p> <p>1) Written notice must be given to the parents of a child with a disability a reasonable time before the public agency-</p> <p>a) Proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child; or</p> <p>b) Refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child.</p> <p>2) The notice must include:</p> <p>a) A description of the action proposed or refused by the agency;</p> <p>b) An explanation of why the agency proposes or refuses to take the action;</p> <p>c) A description of each evaluation procedure, assessment, record or report the agency used as a basis for the proposed or refused action;</p> <p>d) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;</p> <p>e) Sources for parents to contact to obtain assistance in understanding the provisions of this part;</p> <p>f) A description of other options that the IEP Team considered and the reasons why those options were</p>

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		<p>rejected;</p> <p>g) A description of other factors that are relevant to the agency's proposal or refusal</p> <p>3) The notice must be written in language understandable to the general public, provided in the native language or other mode of communication used by the parent.</p> <p>4) If the native language or other mode of communication used by the parent is not a written language, the agency must ensure:</p> <p>a) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;</p> <p>b) That the parent understands the content of the notice;</p> <p>c) That there is written evidence of these requirements.</p>
		<p>§300.504 PROCEDURAL SAFEGUARDS NOTICE</p> <p>1) A copy of the procedural safeguards available to the parent of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents:</p> <p>a) Upon initial referral or parent request for evaluation;</p> <p>b) Upon receipt of a first complaint to the State or first request for a due process hearing in a school year;</p> <p>c) When a disciplinary change of placement /removal has been initiated;</p> <p>d) Upon request by a parent.</p> <p>2) The procedural safeguards notice must include a full explanation of all the procedural safeguards available under §300.148, §§300.151 through 300.153, §300.300, §§300.502 through 300.503, §§300.505 through 300.515, §300.520, §§300.530 through 536, and §§300.610 through 300.625 relating to:</p> <p>a) Independent educational evaluations;</p> <p>b) Prior written notice;</p> <p>c) Parental consent;</p> <p>d) Access to education records;</p> <p>e) Opportunity to present and resolve complaints through the due process hearing and State complaint procedures, including:</p> <p>i) The time period in which to file a complaint;</p> <p>ii) The opportunity for the agency to resolve the complaint;</p> <p>iii) The difference between due process hearing and State complaint procedures, jurisdictions, issues that may be raised, timelines, and relevant procedures.</p> <p>f) The availability of mediation;</p> <p>g) The child's placement during the due process hearing;</p>

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		<ul style="list-style-type: none"> h) Procedures for students subject to placement in an interim alternative educational setting; i) Requirements for unilateral placements by parents of children in private schools at public expense; j) Due process hearings including requirements for disclosure of evaluation results and recommendations; k) Civil actions, including timelines; l) Attorney fees. <p>3) This notice must meet the same requirements for understandable language as for the written prior notice described in §300.503.</p>
		<p>§300.505 ELECTRONIC MAIL</p> <p>The parent of a child with a disability may elect to receive required notices by an electronic mail communication if the public agency makes that option available.</p>
		<p>§300.506 MEDIATION</p> <ul style="list-style-type: none"> 1) The public agency will establish procedures to allow parties to disputes, including those matters arising prior to a request for a due process hearing, to resolve disputes through mediation. Procedures will ensure that the mediation process: <ul style="list-style-type: none"> a) Is voluntary on the part of the parties; b) Is not used to deny or delay a parent's right to a due process hearing or any other right under the IDEA; c) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. 2) A public agency may establish procedures to offer to parents and schools that choose not to use mediation an opportunity to meet, at a time and location convenient to the parties, with a disinterested party: <ul style="list-style-type: none"> a) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center, or community parent resource center; b) Who would explain the benefits of, and encourage the mediation process to the parents;
		<p>§300.507 FILING A DUE PROCESS COMPLAINT</p> <ul style="list-style-type: none"> 1) A parent or public agency may file a request for a due process hearing relating to the identification, evaluation or educational placement of a child with a disability. 2) The request for a due process hearing must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged violation. 3) The public agency must inform the parent of any free or low cost legal and other relevant services available in the area upon parent request.
		§300.508 DUE PROCESS COMPLAINT (HEARING)

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		<ol style="list-style-type: none"> 1) The public agency will have procedures that require either party, or the attorney representing a party, to provide to the other party a confidential due process complaint. 2) The party filing the notice for a hearing must forward a copy of the request to the State. 3) The due process hearing complaint must include the following in order for the complaint to be heard: <ol style="list-style-type: none"> a) The name of the child; b) The residential address of the child; c) The school of attendance; d) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and e) A proposed resolution of the problem to the extent known and available to the party at the time. 4) The due process complaint will be deemed sufficient unless the party receiving the complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the complaint, that it believes the complaint does not meet the content requirements. 5) Within five days of receipt of notice, the hearing officer must determine whether the complaint meets the requirements and notify the parties, in writing, of that determination. 6) A party may amend its due process complaint only if: <ol style="list-style-type: none"> a) The other party consents in writing and is given an opportunity to resolve the complaint through the resolution process; or b) The hearing officer grants permission, but in no case later than five days before the due process hearing begins. 7) If a party files an amended complaint, the relevant timelines begin again. 8) If the public agency has not sent a prior written notice to the parent regarding the subject matter contained in the due process complaint, it must do so within 10 days of receiving the complaint. 9) Within 10 days of receiving the complaint, the receiving party will send to the other party a response that specifically addresses the issues raised in the due process complaint.
		<p>§300.510 RESOLUTION PROCESS</p> <ol style="list-style-type: none"> 1) Within 15 days of receiving the notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the public agency must convene a meeting with the parent and the relevant members of the IEP Team who have specific knowledge of the facts identified in the complaint that: <ol style="list-style-type: none"> a) Includes a representative of the public agency who has agency decision-making authority; b) May not include an attorney of the public agency unless the parent is accompanied by an attorney. 2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the factual basis of the complaint, so the public agency has the opportunity to resolve the dispute. 3) The resolution meeting need not be held if:

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		<ul style="list-style-type: none"> a) The parent and public agency agree in writing to waive the meeting; or b) The parent and public agency agree to use the mediation process. 4) The parent and the public agency determine the relevant IEP Team members to attend the meeting. 5) If the public agency has not resolved the complaint to the satisfaction of the parent within 30 days of the receipt of the complaint, the due process hearing may occur. The timeline for issuing a final decision begins at the end of this 30-day period. 6) The failure of the parent to participate in the resolution meeting that has not been mutually agreed to be waived, will delay the timelines for the resolution process and due process hearing until the meeting is held. 7) If the public agency is unable to obtain the participation of the parent after reasonable efforts have been made and documented, the agency may, at the conclusion of the 30-day period, request the hearing officer dismiss the parent's due process complaint. 8) If the public agency fails to hold the resolution meeting within 15 days of receiving the complaint or fails to participate in the meeting, the parent may request that the hearing officer begin the hearing timeline. 9) The 45-day timeline for the due process hearing starts the day after: <ul style="list-style-type: none"> a) Both parties agree in writing to waive the resolution meeting; OR b) After either the mediation or resolution meeting starts but before the end of the 30-day resolution period, the parties agree in writing that no agreement is possible; OR c) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, one party withdraws from the mediation process. 10) If a resolution is reached at the meeting, the parties must execute a legally binding agreement that is: <ul style="list-style-type: none"> a) Signed by both the parent and public agency representative who has authority to legally bind the agency; and b) enforceable in any State court of competent jurisdiction or in a district court of the U.S. 11) Either party may void the agreement within 3 business days of the agreement's execution.
		<p>§300.518 CHILD'S STATUS DURING PROCEEDINGS</p> <ul style="list-style-type: none"> 1) The child involved in the due process hearing complaint must remain in his or her current educational placement: <ul style="list-style-type: none"> a) Unless a discipline appeal has been filed as provided in §300.533; b) During the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507; or c) Unless the public agency and parents of the child agree otherwise 2) If the complaint involves an application for initial admission to public school, the child, with the

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		<p>consent if the parents, must be placed in the public school until the completion of all the proceedings.</p> <p>3) If the complaint involves an application for initial services for a child who has turned three and transitioning from Part C to Part B , the public agency is not required to provide the Part C services the child had been receiving. If the child is found eligible for special education and related services under Part B, and the parent consents to the initial provision of services under §300.300(b), then the public agency must provide those services that are not in dispute.</p> <p>4) If the hearing officer agrees with the child’s parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and parent for the purposes of (1)(c) of this section.</p>
		<p>§300.519 SURROGATE PARENTS</p> <p>1) The public agency will ensure that the rights of a child are protected by assigning an individual to act as a surrogate for the parents when:</p> <ul style="list-style-type: none"> a) No parent can be identified; b) After reasonable efforts are made, no parent can be located; c) The child is a ward of the State (with no foster parent); d) The child is an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act; <p>2)The public agency will have a method for determining when a surrogate parent is needed and for making surrogate parent assignments.</p> <p>3) The public agency will ensure that a person selected as a surrogate parent:</p> <ul style="list-style-type: none"> a) Is not an employee of the State, the agency, or any other agency that is involved in the education or care of the child b) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and c) Has knowledge and skills that ensure adequate representation of the child. <p>4) In the case of an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until a surrogate parent can be appointed that meets all the requirements of this section.</p>
		<p>§300.520 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY</p> <p>1) When a child with a disability reaches age 18, unless that child has been determined to be incompetent:</p> <ul style="list-style-type: none"> a) The public agency will provide any notice required by the IDEA regulations to both the child and the parents; and b) All rights accorded to parents under Part B of the Act transfer to the child

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		2) When the rights are transferred, the public agency will provide notice to the child and parent of the transfer of rights.